

ARTICLE 8. INDIANA DNA DATA BASE

Rule 1. Application and Administration

240 IAC 8-1-1 Application of article

Authority: IC 10-11-2-10; IC 10-13-6-8

Affected: IC 10-13-6

Sec. 1. This article governs the administration of the Indiana DNA data base established by IC 10-1-9 [*IC 10-1 was repealed by P.L.2-2003, SECTION 102, effective July 1, 2003. See IC 10-13-6.*] (*State Police Department; 240 IAC 8-1-1; filed Apr 23, 1998, 9:25 a.m.: 21 IR 3333; readopted filed Oct 6, 2004, 5:10 p.m.: 28 IR 677*)

240 IAC 8-1-2 Administration

Authority: IC 10-11-2-10; IC 10-13-6-7; IC 10-13-6-8

Affected: IC 10-13-6

Sec. 2. The commander of the state police laboratory has responsibility for the administration of the Indiana DNA data base established by IC 10-1-9 [*IC 10-1 was repealed by P.L.2-2003, SECTION 102, effective July 1, 2003. See IC 10-13-6.*] subject to the authority and approval of the superintendent. (*State Police Department; 240 IAC 8-1-2; filed Apr 23, 1998, 9:25 a.m.: 21 IR 3333; readopted filed Oct 6, 2004, 5:10 p.m.: 28 IR 677*)

Rule 2. Definitions

240 IAC 8-2-1 Applicability

Authority: IC 10-11-2-10; IC 10-13-6-8

Affected: IC 10-13-6

Sec. 1. The definitions in this rule apply throughout this article. (*State Police Department; 240 IAC 8-2-1; filed Apr 23, 1998, 9:25 a.m.: 21 IR 3333; readopted filed Oct 6, 2004, 5:10 p.m.: 28 IR 677*)

240 IAC 8-2-2 "DNA" defined

Authority: IC 10-11-2-10; IC 10-13-6-2; IC 10-13-6-8

Affected: IC 10-13-6

Sec. 2. "DNA" means deoxyribonucleic acid. DNA is located in the nucleated cells and provides an individual's personal genetic blueprint. DNA encodes genetic information that is the basis of human heredity and forensic identification. (*State Police Department; 240 IAC 8-2-2; filed Apr 23, 1998, 9:25 a.m.: 21 IR 3334; readopted filed Oct 6, 2004, 5:10 p.m.: 28 IR 677*)

240 IAC 8-2-3 "DNA analysis" defined

Authority: IC 10-11-2-10; IC 10-13-6-3; IC 10-13-6-8

Affected: IC 10-13-6

Sec. 3. "DNA analysis" means an identification process in which the unique genetic code of an individual that is carried by the individual's DNA is compared with the genetic codes of another individual. (*State Police Department; 240 IAC 8-2-3; filed Apr 23, 1998, 9:25 a.m.: 21 IR 3334; readopted filed Oct 6, 2004, 5:10 p.m.: 28 IR 677*)

240 IAC 8-2-4 "DNA profile" defined

Authority: IC 10-11-2-10; IC 10-13-6-4; IC 10-13-6-8

Affected: IC 10-13-6

Sec. 4. "DNA profile" means the results of all DNA identification tests on an individual's DNA sample. (*State Police Department; 240 IAC 8-2-4; filed Apr 23, 1998, 9:25 a.m.: 21 IR 3334; readopted filed Oct 6, 2004, 5:10 p.m.: 28 IR 677*)

240 IAC 8-2-5 “DNA sample” defined

Authority: IC 10-11-2-10; IC 10-13-6-6; IC 10-13-6-8

Affected: IC 10-13-6

Sec. 5. “DNA sample” means a blood, tissue, or other body fluid sample:

(1) provided by a person with respect to offenses covered by IC 10-1-9 [IC 10-1 was repealed by P.L.2-2003, SECTION 102, effective July 1, 2003. See IC 10-13-6.]; or

(2) submitted to the state police laboratory under IC 10-1-9 [IC 10-1 was repealed by P.L.2-2003, SECTION 102, effective July 1, 2003. See IC 10-13-6.] for analysis or storage, or both.

(State Police Department; 240 IAC 8-2-5; filed Apr 23, 1998, 9:25 a.m.: 21 IR 3334; readopted filed Oct 6, 2004, 5:10 p.m.: 28 IR 677)

240 IAC 8-2-6 “Qualifying offender” defined

Authority: IC 10-11-2-10; IC 10-13-6-8; IC 10-13-6-10

Affected: IC 10-13-6; IC 35-42-4-6; IC 35-43-2-1

Sec. 6. “Qualifying offender” means a person convicted of a felony under IC 35-42 (offense against the person), IC 35-43-2-1 (burglary), or IC 35-42-4-6 (child solicitation):

(1) after June 30, 1996, whether or not sentenced to a term of imprisonment; and

(2) before July 1, 1996, if the person is held in jail or prison on or after July 1, 1996.

(State Police Department; 240 IAC 8-2-6; filed Apr 23, 1998, 9:25 a.m.: 21 IR 3334; readopted filed Oct 6, 2004, 5:10 p.m.: 28 IR 677)

240 IAC 8-2-7 “Superintendent” defined

Authority: IC 10-11-2-10; IC 10-13-6-7; IC 10-13-6-8

Affected: IC 10-13-6

Sec. 7. “Superintendent” means the superintendent of the state police department or the superintendent's designee. (State Police Department; 240 IAC 8-2-7; filed Apr 23, 1998, 9:25 a.m.: 21 IR 3334; readopted filed Oct 6, 2004, 5:10 p.m.: 28 IR 677)

Rule 3. Collection and Submission of Samples

240 IAC 8-3-1 Responsibilities

Authority: IC 10-11-2-10; IC 10-13-6-8; IC 10-13-6-10

Affected: IC 10-13-6

Sec. 1. The department of correction shall collect a DNA sample from a qualifying offender, if the qualifying offender has not previously had a sample collected, and:

(1) is serving a term of incarceration in a facility under the control of the department of correction; or

(2) is transferred to a facility under the control of the department of correction.

(State Police Department; 240 IAC 8-3-1; filed Apr 23, 1998, 9:25 a.m.: 21 IR 3334; readopted filed Oct 6, 2004, 5:10 p.m.: 28 IR 677)

240 IAC 8-3-2 Approved procedure

Authority: IC 10-11-2-10; IC 10-13-6-8; IC 10-13-6-12; IC 10-13-6-17

Affected: IC 10-13-6

Sec. 2. (a) DNA samples shall be collected in a medically approved manner by a physician, registered nurse, licensed vocational nurse, licensed clinical technologist, or other person at the direction of a physician or under a protocol approved by a

physician.

(b) Procedures used by the department of correction to extract and obtain liquid blood samples shall be with the approval and at the direction of the medical director of the department of correction. (*State Police Department; 240 IAC 8-3-2; filed Apr 23, 1998, 9:25 a.m.: 21 IR 3334; readopted filed Oct 6, 2004, 5:10 p.m.: 28 IR 677*)

240 IAC 8-3-3 Collection guidelines

Authority: IC 10-11-2-10; IC 10-13-6-8; IC 10-13-6-10; IC 10-13-6-11

Affected: IC 10-13-6

Sec. 3. (a) The following guidelines apply to the collection of blood samples for submission to the state police laboratory for the Indiana DNA data base:

- (1) Blood samples shall only be drawn from qualifying offenders for use as DNA samples.
- (2) A qualifying offender is not required to submit a blood sample if doing so would present a substantial and an unreasonable risk to the offender.
- (3) Blood samples shall be collected using vacutainer tubes containing EDTA preservative or by a finger stick procedure using stain cards.
- (4) After collection of the blood sample, a label approved by the state police laboratory shall be affixed to the blood sample container; this label shall be completed with required information, including the name and inmate number of the qualifying offender.
- (5) Information shall be recorded on a form approved by the state police laboratory to accompany each blood sample to include the following:

(A) The qualifying offender's:

- (i) name;
- (ii) inmate number; and
- (iii) inked right thumb print.

(B) If the qualifying offender has no right thumb, then the inked print of another finger and a written notation identifying the finger used shall be recorded.

(6) The blood sample of the qualifying offender shall be placed in a container approved by the state police laboratory.

(7) An initialed integrity seal shall be placed across the lid of the approved container.

(8) Blood samples may be refrigerated for up to seven (7) days before submission to the state police laboratory.

(9) Blood samples shall be refrigerated until delivery to the state police laboratory.

(b) When it is not possible to obtain a blood sample, the department of correction shall obtain an oral swab.

(c) The following guidelines apply to the collection of oral swabs for submission to the state police laboratory for the Indiana DNA data base:

(1) Oral swabs shall only be collected from qualifying offenders for use as DNA samples.

(2) Oral swabs shall be collected using sterile cotton tipped applicators.

(3) The following procedure shall be used to collect a sample with an oral swab:

(A) Remove a sterile tipped applicator from its package.

(B) Swab the inner surface of the cheek using a circular motion and complete fifteen (15) to twenty (20) circles.

(C) Repeat the steps in clauses (A) and (B) with a second sterile tipped applicator.

(D) Place the used swabs into two (2) separate envelopes approved by the state police laboratory for the collection of DNA samples by oral swabs and place the two (2) smaller envelopes into a larger envelope approved by the state police laboratory.

(4) A label approved by the state police laboratory shall be affixed across the flap of the larger envelope; this label shall be completed with required information, including the name and inmate number of the qualifying offender.

(5) Information shall be recorded on a form approved by the state police laboratory to accompany each oral swab sample to include the following:

(A) The qualifying offender's:

- (i) name;
- (ii) inmate number; and

(iii) inked right thumb print.

(B) If the qualifying offender has no right thumb, then the inked print of another finger and a written notation identifying the finger used shall be recorded.

(6) Oral swab samples may be refrigerated for up to seven (7) days before submission to the state police laboratory.

(7) Oral swab samples shall be refrigerated until delivery to the state police laboratory.

(State Police Department; 240 IAC 8-3-3; filed Apr 23, 1998, 9:25 a.m.: 21 IR 3334; readopted filed Oct 6, 2004, 5:10 p.m.: 28 IR 677)

Rule 4. Quality Control

240 IAC 8-4-1 Quality control testing

Authority: IC 10-11-2-10; IC 10-13-6-8; IC 10-13-6-13

Affected: IC 10-13-6

Sec. 1. The state police laboratory shall perform tests on DNA samples for quality control and assurance. *(State Police Department; 240 IAC 8-4-1; filed Apr 23, 1998, 9:25 a.m.: 21 IR 3335; readopted filed Oct 6, 2004, 5:10 p.m.: 28 IR 677)*

240 IAC 8-4-2 Quality assurance standards

Authority: IC 10-11-2-10; IC 10-13-6-8; IC 10-13-6-14

Affected: IC 10-13-6

Sec. 2. (a) A laboratory conducting forensic DNA analysis in Indiana shall comply with nationally recognized standards for quality assurance and proficiency testing.

(b) In the event of competing quality assurance standards, the state police laboratory commander shall identify the nationally recognized standard that a laboratory conducting forensic DNA analysis in Indiana must implement and follow. *(State Police Department; 240 IAC 8-4-2; filed Apr 23, 1998, 9:25 a.m.: 21 IR 3335; readopted filed Oct 6, 2004, 5:10 p.m.: 28 IR 677)*

240 IAC 8-4-3 Participation

Authority: IC 10-11-2-10; IC 10-13-6-8; IC 10-13-6-20

Affected: IC 10-13-6

Sec. 3. If a laboratory performing forensic DNA analysis in Indiana fails to meet required quality control standards, the superintendent shall deny the laboratory the right to exchange DNA identification records with federal, state, or local criminal justice agencies. *(State Police Department; 240 IAC 8-4-3; filed Apr 23, 1998, 9:25 a.m.: 21 IR 3335; readopted filed Oct 6, 2004, 5:10 p.m.: 28 IR 677)*

Rule 5. Authorized Access

240 IAC 8-5-1 Request for access; denial

Authority: IC 10-11-2-10; IC 10-13-6-8; IC 10-13-6-19

Affected: IC 10-13-6

Sec. 1. (a) A forensic DNA laboratory seeking access to the DNA data base must submit a written request to the commander of the state police laboratory.

(b) The written request required by subsection (a) must state the following:

(1) The identity of the federal, state, or local law enforcement agency requesting access.

(2) The purpose of the testing to be performed.

(c) A request submitted under subsection (a) that does not identify a requesting law enforcement agency or fails to state a proper purpose for testing under IC 10-1-9 [IC 10-1 was repealed by P.L.2-2003, SECTION 102, effective July 1, 2003. See IC 10-13-6.] shall be denied. *(State Police Department; 240 IAC 8-5-1; filed Apr 23, 1998, 9:25 a.m.: 21 IR 3335; readopted filed Oct*

6, 2004, 5:10 p.m.: 28 IR 677)

Rule 6. Expungement

240 IAC 8-6-1 Request for expungement

Authority: IC 10-11-2-10; IC 10-13-6-8; IC 10-13-6-18

Affected: IC 10-13-6

Sec. 1. (a) A person whose DNA profile has been included in the Indiana DNA data base and who is eligible for expungement under IC 10-1-9-20 [*IC 10-1 was repealed by P.L.2-2003, SECTION 102, effective July 1, 2003. See IC 10-13-6-18.*] may submit a written request for expungement to the superintendent.

(b) All identifiable information pertaining to the person in the DNA data base and all DNA samples related to the request will be destroyed upon receipt of the following:

- (1) the written request for expungement under subsection (a);
- (2) a certified copy of the court order reversing and dismissing the conviction that made the person a qualifying offender; and
- (3) identifying information to include the following:
 - (A) The full name of the person requesting expungement.
 - (B) The inmate number and name of the person that contributed the DNA sample correlating to the DNA profile to be expunged.
 - (C) The inked right thumb print of the person requesting expungement, or if the person has no right thumb, then the inked print of another finger and information identifying the finger actually used.

(State Police Department; 240 IAC 8-6-1; filed Apr 23, 1998, 9:25 a.m.: 21 IR 3336; readopted filed Oct 6, 2004, 5:10 p.m.: 28 IR 677)

*